

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DONALD F. BENOIT, Derivatively on
Behalf of MBNA CORP. and on Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

vs.

BRUCE L. HAMMONDS, *et al.*

Defendants,

--and--

BANK OF AMERICA CORPORATION, a
Delaware Corporation, AS SUCCESSOR IN
INTEREST TO MBNA CORP., and MBNA
CORP., a Maryland Corporation,

Nominal Defendants.

Civ. No. 07-CV-561

LEMON BAY PARTNERS, and MALCOLM
ROSENWALD,

Plaintiff,

vs.

BRUCE L. HAMMONDS, *et al.*

Defendants,

--and--

BANK OF AMERICA CORPORATION, AS
SUCCESSOR IN INTEREST TO MBNA
CORP., and MBNA CORP.,

Nominal Defendants.

Civ. No. 07-CV-562

AFFIDAVIT OF RICHARD H. MORSE

STATE OF DELAWARE)
 : ss.
COUNTY OF NEW CASTLE)

RICHARD H. MORSE, being duly sworn, deposes and says:

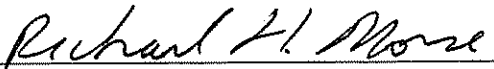
1. I am a member of the Bar of the State of Delaware and of Young
Conaway Stargatt & Taylor, LLP, counsel for defendants in this action. I submit this

affidavit to provide the Court with materials cited in Defendants' Answering Brief in Opposition to the Benoit Group's Motion to Vacate the PSLRA Stay of Discovery.

2. Attached hereto as Exhibit A is a true and correct copy of a January 14, 2008 E-mail from Laurence Paskowitz.

3. Attached hereto as Exhibit B is a true and correct copy of a January 16, 2008 E-mail from Edward Micheletti.

4. Attached hereto as Exhibit C is a true and correct copy of a January 16, 2008 E-mail from Richard Pepperman.


Richard H. Morse

Sworn to before me
on this 7th day of February, 2008

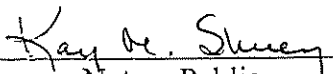

Notary Public

EXHIBIT A

From: Classattorney@aol.com
Sent: Monday, January 14, 2008 7:42 PM
To: Pepperman, Richard
Cc: Possick, M. David; rjacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Victor.Clark@skadden.com; Friedman, Stacey; Williams, Ryan C.; Edward.Welch@skadden.com; Susan.Saltzstein@skadden.com; Edward.Micheletti@skadden.com; rmorse@ycst.com
Subject: Re: MBNA-REPLY BRIEF

Dear Counsel:

In the recent briefing on the Benoit Group's lead plaintiff motion, defendants indicated that fact discovery in the class action led by Activest is proceeding apace and a discovery cutoff date of February 29, 2008 has been set. While we obviously disagree that Activest can lead the Benoit Group case, we do feel that it would be most efficient for the Benoit Group's counsel to participate in the ongoing discovery so as to avoid duplication of effort at some later stage.

In order to accomplish this, we request that defendants stipulate to lifting the PSLRA stay. There is no justification for the stay to bar discovery in the Benoit Group cases where discovery into the pre-April 20, 2005 events is ongoing in other litigation, and will be helpful in both the Activest case and in this case. While we believe courts have lifted the stay in situations where the discovery covered by the PSLRA stay is already being produced to other parties, we hope that this matter can be worked out among counsel, without the necessity of motion practice. Of course, we would work with Activest's counsel to prevent any duplication of effort, and any unnecessary burden on the defendants.

For these reasons, we request that defendants stipulate to lift the PSLRA stay. Please let us know your position on this request by the end of this week, if possible.

Laurence D. Paskowitz, Esq.
Paskowitz & Associates
60 East 42nd Street
46th Floor
New York, NY 10165
(212) 685-0969 (tel.)
(212) 685-2306 (fax)
(718) 344-6470 (cell)
(800) 705-9529 (toll free)

classattorney@aol.com

CONFIDENTIALITY NOTICE: The information contained in this electronic message (e-mail) is ATTORNEY PRIVILEGED AND/OR CONFIDENTIAL and intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, copy, or distribution of this communication is strictly prohibited. Paskowitz & Associates will accept no responsibility or liability in respect to this email other than to the addressee. If you have received this communication in error, please immediately delete all originals, copies and attachments from your system. Destroy any hard copies of it and please notify the sender immediately by telephone or by return e-mail. Thank you.

2/7/2008

Start the year off right. Easy ways to stay in shape in the new year.

EXHIBIT B

From: Micheletti, Edward B [Edward.Micheletti@skadden.com]
Sent: Wednesday, January 16, 2008 2:11 PM
To: Classattorney@aol.com
Cc: Possick, M. David; rljacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Clark, Victor (WIL); Friedman, Stacey; Williams, Ryan C.; Welch, Edward P (WIL); Saltzstein, Susan L (NYC); rmorse@ycst.com; Pepperman, Richard
Subject: RE: MBNA--REPLY BRIEF

Our clients are not named as defendants in the class action referenced in your e-mail, so we do not take a position about how discovery should proceed in that case. However, it is our position, as set forth in our response to your motion to consolidate, that your action was improperly filed, and should be stayed until after the Court has the opportunity to decide your pending motion for reconsideration in the action that was already dismissed. It is also our view that -- to the extent the Court reaches the merits of your complaint -- you have not stated a claim against our clients, and thus, discovery at this time is not appropriate.

Regards,

Ed M.

From: Classattorney@aol.com [mailto:Classattorney@aol.com]
Sent: Monday, January 14, 2008 7:42 PM
To: pepperman@sullcrom.com
Cc: possickmd@sullcrom.com; rljacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Clark, Victor (WIL); FriedmanS@sullcrom.com; WilliamsRy@sullcrom.com; Welch, Edward P (WIL); Saltzstein, Susan L (NYC); Micheletti, Edward B (WIL); rmorse@ycst.com
Subject: Re: MBNA--REPLY BRIEF

Dear Counsel:

In the recent briefing on the Benoit Group's lead plaintiff motion, defendants indicated that fact discovery in the class action led by Activest is proceeding apace and a discovery cutoff date of February 29, 2008 has been set. While we obviously disagree that Activest can lead the Benoit Group case, we do feel that it would be most efficient for the Benoit Group's counsel to participate in the ongoing discovery so as to avoid duplication of effort at some later stage.

In order to accomplish this, we request that defendants stipulate to lifting the PSLRA stay. There is no justification for the stay to bar discovery in the Benoit Group cases where discovery into the pre-April 20, 2005 events is ongoing in other litigation, and will be helpful in both the Activest case and in this case. While we believe courts have lifted the stay in situations where the discovery covered by the PSLRA stay is already being produced to other parties, we hope that this matter can be worked out among counsel, without the necessity of motion practice. Of course, we would work with Activest's counsel to prevent any duplication of effort, and any unnecessary burden on the defendants.

For these reasons, we request that defendants stipulate to lift the PSLRA stay. Please let us know your position on this request by the end of this week, if possible.

2/7/2008

Laurence D. Paskowitz, Esq.
 Paskowitz & Associates
 60 East 42nd Street
 46th Floor
 New York, NY 10165
 (212) 685-0969 (tel.)
 (212) 685-2306 (fax)
 (718) 344-6470 (cell)
 (800) 705-9529 (toll free)

classattorney@aol.com

CONFIDENTIALITY NOTICE: The information contained in this electronic message (e-mail) is ATTORNEY PRIVILEGED AND/OR CONFIDENTIAL and intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, copy, or distribution of this communication is strictly prohibited. Paskowitz & Associates will accept no responsibility or liability in respect to this email other than to the addressee. If you have received this communication in error, please immediately delete all originals, copies and attachments from your system. Destroy any hard copies of it and please notify the sender immediately by telephone or by return e-mail. Thank you.

Start the year off right. Easy ways to stay in shape in the new year.

***** To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein. *****

***** This email and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified any dissemination, distribution or copying of this email, and any attachments thereto, is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original copy and any copy of any email, and any printout thereof. Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request. *****

2/7/2008

2/7/2008

EXHIBIT C

From: Pepperman, Richard
Sent: Wednesday, January 16, 2008 4:53 PM
To: 'Classattorney@aol.com'; Edward.Micheletti@skadden.com
Cc: Possick, M. David; rljacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Victor.Clark@skadden.com; Friedman, Stacey; Williams, Ryan C.; Edward.Welch@skadden.com; Susan.Saltzstein@skadden.com; rmorse@ycst.com
Subject: RE: MBNA--REPLY BRIEF

Larry,

We also do not agree to lift the PSLRA stay of discovery. Particularly given that the Court has not yet ruled on your lead plaintiff motion, we think that the request is premature. Of course, once the stay is lifted, we will provide you with copies of the discovery taken in the other two related actions. As always, I am happy to discuss this issue with you further if you'd like,

Rick

-----Original Message-----

From: Classattorney@aol.com [mailto:Classattorney@aol.com]
Sent: Wednesday, January 16, 2008 2:16 PM
To: Edward.Micheletti@skadden.com
Cc: Possick, M. David; rljacobs@pipeline.com; JFINK@RUFLAW.COM; ZN@chimicles.com; jwilliams@ruflaw.com; ssanders@ruflaw.com; Victor.Clark@skadden.com; Friedman, Stacey; Williams, Ryan C.; Edward.Welch@skadden.com; Susan.Saltzstein@skadden.com; rmorse@ycst.com; Pepperman, Richard
Subject: Re: MBNA--REPLY BRIEF

Ed: I appreciate your response, and your getting back to us in a timely manner. I am still waiting to hear from Sullivan & Cromwell on this matter. Larry P.

In a message dated 1/16/2008 2:11:16 P.M. Eastern Standard Time, Edward.Micheletti@skadden.com writes:

Our clients are not named as defendants in the class action referenced in your e-mail, so we do not take a position about how discovery should proceed in that case. However, it is our position, as set forth in our response to your motion to consolidate, that your action was improperly filed, and should be stayed until after the Court has the opportunity to decide your pending motion for reconsideration in the action that was already dismissed. It is also our view that -- to the extent the Court reaches the merits of your complaint -- you have not stated a claim against our clients, and thus, discovery at this time is not appropriate.

Regards,

Ed M.

2/7/2008

Message

Page 2 of 2

Start the year off right. Easy ways to stay in shape in the new year.

2/7/2008

CERTIFICATE OF SERVICE

I, Richard H. Morse, hereby certify that on February 7, 2008 I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

A. Zachary Naylor
CHIMICLES & TIKELLIS, LLP
One Rodney Square
P.O. Box 1035
Wilmington, DE 19899

I further certify that on February 7, 2008, I caused a copy of the foregoing document to be served by Federal Express on the following counsel:

Jeffrey P. Fink
Julia Williams
ROBBINS UMEDA & FINK, LLP
610 West Ash Street, Suite 1800
San Diego, CA 92101

Jay B. Kasner,
Susan L. Saltzstein
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036-6522

Roy L. Jacobs
ROY JACOBS & ASSOCIATES
60 East 42nd Street, 46th Floor
New York, NY 10165

Laurence D. Paskowitz
PASKOWITZ & ASSOCIATES
60 East 42nd Street, 46th Floor
New York, NY 10165

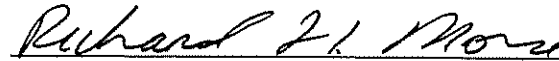
Irving Bizar
BALLON STOLL BADER &
NADLER, LLP
1450 Broadway
New York, NY 10018

I further certify that on February 7, 2008, I caused a copy of the foregoing document to be served by hand delivery on the below listed counsel:

Edward P. Welch
Edward B. Micheletti
SKADEN, ARPS, SLATE,
MEAGHER & FLOM LLP
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899-0636

A. Zachary Naylor
Pamela S. Tikellis
CHIMICLES & TIKELLIS, LLP
One Rodney Square
P.O. Box 1035
Wilmington, DE 19899

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Richard H. Morse (I.D. No. 531)
17th Floor, Brandywine Building
1000 West Street
P.O. Box 391
Wilmington, Delaware 19899-0391
(302) 571-6651
rmorse@ycst.com